

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Revision No.68 of 2007.

Judgement reserved on: 14.8.2007

Date of decision: 17.9.2007.

Lal Chand and another	Petitioners
Vs.	
Singh Ram	 Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? No

For the petitioners : Mr. B.S. Chauhan, Advocate.

For the Respondent : Mr. Vinay Thakur, Advocate.

Kuldip Singh, Judge.

This revision has been filed against the judgment dated 9.5.2007 passed by learned Sessions Judge (F), Shimla in Revision Petition No.7-S/10 of 2006/04.

2. The brief facts of the case are that respondent Singh Ram on 15.6.2001 filed a complaint under Sections 392, 506, 323 read with Section 34 IPC against petitioners Lal Chand and Ganga Ram. In the complaint it was alleged that on 14.3.2001, the respondent purchased 150 apple plants from Horticultural Department, Theog at the rate of Rs.8/- per plant, total amounting to Rs. 1200 /- which were to be planted in the pits prepared by the

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

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respondent in village Kog. The respondent reached village Kog at 2.30. p.m. The petitioners suddenly appeared at village Kog and overpowered the respondent. The petitioner No.1 caught hold the respondent from his head and pulled him down, petitioner No.2 snatched the bundle of apple plants from the respondent and thereafter petitioners ran away. The petitioners caused loss of Rs.3000/- to the respondent in as much as respondent purchased apple plants for Rs.1200/- and he spent Rs. 1800/- for digging pits for plantation of apple plants.

3. The respondent thereafter came to his house and took his son Durga Singh to the house of petitioners and asked about apple plants. The petitioners slapped the son of complainant and threatened to kill both of them. The respondent reported the matter to the police but no FIR was registered. The respondent on 23.3.2001 filed an application in the Court and the same was sent to the police for investigation and to lodge FIR but no FIR was registered by the police. The respondent on these allegations filed complaint dated 15.6.2001 in the Court of Judicial Magistrate Ist Class, Theog under Sections 392, 323 506 read with Section 34 IPC.

4. The respondent examined three witnesses including himself in the preliminary evidence. The learned Judicial Magistrate summoned the petitioners under Sections 379 and 506 IPC vide order dated 16.7.2003. The pre-charge evidence was recorded and ultimately learned Judicial Magistrate discharged the petitioners on 15.6.2004, which order was assailed by respondent in revision. The

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learned Sessions Judge set aside the discharge order dated 15.6.2004 vide judgment dated 9.5.2007 passed in Revision Petition No.7-S/10 of 2006/04 and directed the trial Court to proceed further with the case in accordance with law. The petitioners are thus in revision in this Court.

5. I have heard the learned counsel for the parties and gone through the record.

6. CW-1 Singh Ram has stated that on 14.3.2001 he purchased 150 apple plants from Block Office at the rate of Rs.8/- per plant. The petitioners in village Kog suddenly appeared, Lal Chand caught hold him and Ganga Ram snatched bundle of apple plants from him and petitioners left the place towards village Kaderwal. He called Durga Singh and then they went to village Kaderwal. Ganga Ram gave 2-3 slaps to Durga Singh. Both the petitioners threatened to kill them. In cross-examination he has stated that he can not produce the receipt showing purchase of apple plants. He has admitted that Nichu has filed a case against petitioner Lal Chand and his brother and he was witness of Nichu in that case. The house of Nichu is at a distance of 100-150 meters from the place of occurrence. He was confronted with his earlier statement A to A.

7. CW-2 Madan Thakur working in Horticultural Department at Theog has stated that his department sells apple plants and also issue receipts regarding sale of apple plants. In his record which he brought in the Court there is no sale of apple plants in favour of respondent.

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8. CW-3 Smt. Nichu Devi has stated that in the year 2001 at about 2-2 ½ p.m. Lal Chand caught hold respondent from head and Ganga Ram snatched bundle of apple plants from respondent and proceeded towards Kadrawag. Leela Devi has also seen the occurrence. In cross-examination, she has stated that at that time she was with her cattle in cow shed. The village is at the distance of 50 meters from the place of occurrence. She has further stated that she has also instituted a case against the petitioners and respondent is a witness in that case.

9. CW-4 Smt. Leela Devi has stated that on 14.3.2001 she was coming to her village when she reached near village Kog she saw Singh Ram was coming from Maouri side, he was carrying about 150-200 apple plants in bundle. It was 2.30 p.m. Lal Chand had thrown that bundle towards Ganga Ram. Lal Chand caught hold Singh Ram from head and took away apple plants bundle.

10. The learned counsel for the petitioners-accused has submitted that the complaint filed by the respondent is false. Nothing has happened as alleged in the complaint. There are material contradictions in the complaint and pre-charge evidence led by the respondent. The story of the respondent is highly improbable. The receipt of apple plants has not been placed on record. There is no evidence with respect to theft, beatings or criminal intimidation. There is no material on record to frame charge against the accused. The learned counsel for the respondent-complainant has submitted that at this stage the jurisdiction of this Court is very limited. There is

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enough evidence on record to frame charge against petitioners under Sections 379 and 506 IPC. This Court at this stage will not look into the evidence as if sitting in appeal against conviction.

11. The case of the respondent is that the petitioners took away 150 apple plants valuing Rs.1200/- which he has purchased from Horticultural Department for plantation, his further case is that petitioners gave beatings to his son and threatened that they would be killed. I am purposely not commenting upon the merits of the case of either side. At the stage of charge interference can be made only if material on record is insufficient for framing charge. The peeping hole at the time of framing of charge is very narrow. In **AIR 1999 Supreme Court 3845, State of U.P. vs. Udai Narayan and another.** The Apex Court in para-5 of the judgment has observed as follows:-

“Having examined the rival submission at the Bar and on scrutinizing the impugned judgment of the High Court, we have no hesitation to come to the conclusion that the High Court committed serious error in discharging the accused persons by advancing elaborate arguments on scanning and scrutinizing the evidence and materials produced by the prosecution. We refrain from recording any positive conclusion on the materials as it may affect the trial. Suffice it to say that bare perusals of the judgment of the High Court would indicate that the High Court exceeded its jurisdiction in ordering discharge of the accused persons as if sitting in appeal against an order of conviction”.

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In **State of M.P. vs. S.B. Johari and others [(2000) 2 Supreme Court Cases 57]**, in para-4, the Hon'ble Supreme Court has held as follows:-

*"It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjayya** after considering the provisions of Sections 227 and 228 Cr.PC, the Court posed a question, whether at the stage of framing the charge, the trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial. The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged".*

The perusal of judgment dated 15.6.2004 of the trial Court would show that the trial Court has discussed the evidence in detail in the manner as if he is deciding the case finally after full trial. At the stage of framing of the charge scanning and scrutiny of the

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evidence is to be done to a limited extent. The appreciation of the evidence is not to be done in the manner required for final disposal of the case after completion of the trial. Only prima facie case is required for issuing process in a complaint case, for framing charge slightly more material is required and for conviction proof beyond reasonable doubt is required. In view of ***State of U.P. vs. Udai Narayan and State of M.P. vs. S.B. Johari*** (Supra) the present case is not of the nature that petitioners are entitled to discharge at the stage of framing of the charge. The learned Sessions Judge has rightly considered the matter, no case for interference is made out.

12. In view of the above discussion, the revision petition is dismissed. The observations made in this judgment shall not be construed, an expression of opinion on the merits of the case and the learned Court below shall decide the case strictly in accordance with law.

**(Kuldip Singh)
Judge.**

**September 17, 2007
(sks)**